

DON NOON

IBLA 82-1246

Decided November 10, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 67705, CA MC 67778, and CA MC 67779.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequences must be borne by the claimant.

APPEARANCES: Don Noon, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Don Noon appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated August 6, 1982, which declared the unpatented Candy Lane, Heather Beast, and Hawks Eye placer mining claims, CA MC 67705, CA MC 67778, and CA MC 67779, abandoned and void because evidence of annual assessment work for calendar year 1981 had not been filed on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The evidence was received and date stamped by BLM January 18, 1982.

Appellant alleges that after receiving a copy of the recorded proof of labor from the county recorder of San Bernardino County, California, December 17, 1981, he mailed the instrument describing the assessment work for 1981 by ordinary mail on December 18, 1981, from Temple City, California, in expectation that the Postal Service would deliver the envelope to BLM before December 30, 1981.

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a), require that evidence of assessment work for each year be filed in the proper office of BLM on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed.

Although appellant asserts that the document was actually mailed December 18, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the delay in delivering the envelope containing the evidence of assessment work to BLM was caused by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Regina McMahon, *supra*; Everett Yount, *supra*. Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to confer with BLM about the possibility of relocating these claims.

Accordingly, pursuant to authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Melvin J. Mirkin
Administrative Judge
Alternate Member

